ness require." All strikers ultimately returned to work; Rockwell, Whiting, and Petty returned to their jobs as city truck drivers and worked at these jobs on June 4 and 5 (R. 29, 15, 128).

On June 5, however, Rockwell, Whiting, and Petty were called into Frankenthal's office and told by him that they were "not in the trucking unit and that they would be placed into the plant * * * into the bargaining unit which now represented them" (R. 29, 16, 225-226). Frankenthal also read a letter from the drivers' supervisor, Harlan Hagemeir, which stated that, since Rockwell, Whiting, and Petty did not report to work on June 1 and 2, they were no longer considered reliable, and Hagemeir did not want them driving for the Company any longer (R. 27, 16, 128). Frankenthal then assigned Whiting and Petty to the boning room, and Rockwell to the loading dock (R. 29, 16; 225-227).

On June 7, Rockwell, Whiting, and Petty began their new jobs, all of which were more physically exacting than city truck driving. Although Rockwell and Whiting had previously sustained compensable leg injuries on the job, they were assigned jobs such as lifting 200 pound "fronts," carrying beef, and boning "rounds" in a standing position. As a result, both Rockwell and Whiting aggravated their old injuries, and had to be put on workmen's compensation for several months. Petty, meanwhile, was assigned the job of pulling and boning 40 to 80 pound rounds of beef in a room with a temperature between 35 and 40 degrees. (R. 29, 30, 16-18, 106-107, 123-124, 130-136, 147, 193, 204-208.)

B. The Decisions Below

The Board adopted the Administrative Law Judge's finding that the Company violated Section 8(a)(1) of the

Act by telling employees Rockwell, Whiting, and Petty that they were no longer wanted as truck drivers by the Company because they did not report for work during the strike (Pet. App. A14). The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by transferring Rockwell, Whiting, and Petty to more physically exacting jobs because of their participation in the strike, not—as the Law Judge found—because of Frankenthal's commitment to Wentz to return all strikers to the Amalgamated unit (Pet. App. A17). Finally, contrary to the Law Judge, the Board declined to defer the issue of the transfers to arbitration under either the Amalgamated or the Independent contracts, because it was not clear whether the city truck drivers belonged in the Independent or the Amalgamated unit at the time of the transfers and the Independent had refused to represent the drivers under the grievance procedure shortly after the transfers (Pet. App. A17-A18).

The Board ordered the Company, *inter alia*, to cease and desist from the unfair labor practices found, and from in any other manner interfering with, restraining, or coercing employees in the exercise of their statutory rights (Pet. App. A19-A20).

The court of appeals, with one judge dissenting, upheld the Board's findings and enforced its order (Pet. App. A2-A11).

ARGUMENT

1. The initial issue raised by the petition is whether there is substantial evidence to support the Board's finding that the Company transferred Rockwell, Whiting, and Petty to less desirable jobs as a reprisal for their participation in the strike. That evidentiary issue does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340

U.S. 474, 490-491. In any event, the facts summarized above (pp. 2-4) show that there is ample basis for the Board's finding.[4]

2. Petitioner's contention (Pet. 14-18) that the Board erred in declining to require that the issue of the transfers be submitted to arbitration is without merit. The Board has broad discretion to determine whether it will exercise its power to remedy an unfair labor practice rather than defer to the arbitral process. *Carey* v. *Westinghouse*, 375 U.S. 261; *National Labor Relations Board* v. *Strong*, 393 U.S. 357, 360-362. In *Collyer Insulated Wire*, 192 NLRB 837, the Board announced a policy of deferring to arbitration in cases where "the contract clearly provides for grievance and arbitration machinery * * * and it appears that the arbitral interpretation of the contract will resolve both the unfair labor practice issue and the contract interpretation issue in a manner compatible with the purposes of the Act." Here, however, in light of the uncertainty as to the unit placement of the three drivers and the willingness of either union to represent them properly (*supra*, p. 3), the Board did not abuse its discretion in declining to defer to abritration.[5]

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[4]Contrary to petitioner's assertion (Pet. 11-14), the Board did not overrule the findings of fact of the Administrative Law Judge, but drew different inferences from those findings, including the undisputed finding that Vice President Frankenthal indicated to the discriminatees that he was transferring them because they had failed to report for work during the strike (Pet. App. A17).

[5]These factors were not present in the deferral cases cited by petitioner (Pet. 15-17).

3. Finally, petitioner's contention (Pet. App. 18-19) that the portion of the Board's order directing it to cease and desist from "in any other manner" abridging its employees' statutory rights is overly broad turns on the facts of this particular case. Here the Board reasonably concluded that, since the Company's conduct in transferring the three employees to more onerous jobs because of their participation in the strike "violated fundamental employee rights guaranteed by the Act" (Pet. App. A19), a broad remedial order was required. See *National Labor Relations Board* v. *Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4); *National Labor Relations Board* v. *United Mineral & Chemical Corp.*, 391 F. 2d 829, 837-838 (C.A. 2); *P.R. Mallory* v. *National Labor Relations Board*, 400 F. 2d 956, 959-960 (C.A. 7), certiorari denied, 394 U.S. 918.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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